

Message Text

CONFIDENTIAL

PAGE 01 USUN N 03710 142257Z

14

ACTION DLOS-06

INFO OCT-01 IO-13 ISO-00 FEA-01 ACDA-07 AGR-05 AID-05

CEA-01 CEQ-01 CG-00 CIAE-00 CIEP-01 COME-00 DODE-00

DOT-00 EB-07 EPA-01 ERDA-05 FMC-01 TRSE-00 H-02

INR-07 INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-01

OES-06 OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15 USIA-06

SAL-01 AF-08 ARA-06 EA-07 EUR-12 NEA-10 /158 W

----- 111882

P 142208Z SEP 76

FM USMISSION USUN NY

TO SECSTATE WASHDC PRIORITY 9137

C O N F I D E N T I A L USUN 3710

FROM US DEL LOS

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: INFORMAL PLENARY ON DISPUTE SETTLEMENT SEPTEMBER 14, 1976

REF: USUN 3685

1. INFORMAL PLENARY SEPTEMBER 14 COMPLETED REVIEW OF ANNEX II (SPECIAL PROCEDURES) AND THUS COMPLETED REVIEW OF ENTIRE SINGLE NEGOTIATING TEXT, PART IV. AMERASINGHE ANNOUNCED AT CLOSE OF MEETING THAT THERE IS INSUFFICIENT TIME REMAINING THIS SESSION TO TAKE UP THE PREAMBLE AND FINAL CLAUSES, AND THAT THE CHAIRMAN OF COMMITTEE I HAD NOT RESPONDED AS TO WHETHER THE RELATIONSHIP BETWEEN PART I AND PART IV DISPUTE SETTLEMENT PROCEDURES SHOULD BE CONSIDERED IN INFORMAL PLENARY. BARRING THE UNFORESEEN, THE INFORMAL PLENARY HAS COMPLETED ITS WORK FOR THE SESSION. A REVISED SINGLE NEGOTIATING TEXT, PART IV, IS EXPECTED TO BE PREPARED BY THE PRESIDENT AND ISSUED WITHIN A MONTH OR SO.

CONFIDENTIAL

CONFIDENTIAL

PAGE 02 USUN N 03710 142257Z

2. IN CONTRAST TO FIRST PART OF DEBATE ON ANNEX II REPORTED PARA. 2 REFTEL), ONLY OMAN SUPPORTED DELETION OF ANNEX II. INDIA AND NEW ZEALAND EXPRESSED STRONG SUPPORT FOR THE LOS TRIBUNAL AS THE CENTRAL AND SUPREME PROCEDURE, AND THOUGHT SPECIAL PROCEDURES COULD BE INCORPORATED WITHIN LOS TRIBUNAL IN AN ADVISORY CAPACITY. YUGOSLAVIA, BRAZIL, IRAN, KENYA AND LIBERIA SUPPORTED RETENTION OF SPECIAL PROCEDURES WITH INCLUSION OF THE TUNISIAN AMENDMENTS TO ARTICLE 9 OF THE MAIN TEXT, (REPORTED PARA. 6 REFTEL), EMPHASIZING THAT THEY DID NOT WISH TO BE COMPELLED TO USE THEM IN ANY CASE. BULGARIA, THE GDR AND THE UKRAINE STRONGLY SUPPORTED ANNEX II, AS AMENDED BY POLAND, WITH OTHER SIMILAR AMENDMENTS SUGGESTED BY JAPAN, ITALY AND FRANCE THE PREVIOUS DAY. THE FRG AND UKRAINE SAID THE TUNISIAN AMENDMENT PUT THE SPECIAL PROCEDURES IN AN INFERIOR POSITION TO THE OTHER PROCEDURES. CANADA SUPPORTED COASTAL STATE GROUP POSITION EXPRESSED BY MEXICO.

3. AUSTRALIA THOUGHT THE SPECIAL PROCEDURES WERE USEFUL FOR TECHNICAL DISPUTES AND SUGGESTED THAT WHERE MEMBERS ARE NOT APPOINTED BY THE PARTIES, IT WAS MORE APPROPRIATE FOR THE PRESIDENT OF THE LOS TRIBUNAL TO DO SO THAN FOR THE DIRECTOR GENERAL OF THE SPECIALIZED AGENCIES TO DO SO. THE FRG SUGGESTED THE TASK BE PERFORMED BY THE SECRETARY GENERAL OF THE UN, IN CONSULTATION WITH THE DIRECTOR GENERAL OF THE APPROPRIATE SPECIALIZED AGENCY, AND RECEIVED SUPPORT FROM SWITZERLAND, BULGARIA AND UK. UK SUGGESTED NEED FOR A BUREAU FOR THE SPECIAL PROCEDURES TO FACILITATE ESTABLISHMENT OF COMMISSIONS, AND SAID IT WOULD HOPE TO HAVE A MORE ELABORATE PROPOSAL AT THE NEXT SESSION. FRG, WITH US SUPPORT, ALSO SUGGESTED INCLUDING ARTICLE 5 OF ANNEX IB, INCORPORATING 1907 HAGUE CONVENTION PROCEDURES, IN ANNEX II AS WELL.

4. THE US SAID IT COULD SUPPORT THE RETENTION OF SPECIAL PROCEDURES, NOTING THE NEED TO SOLVE THE PROBLEM CONCERNING PROVISIONAL MEASURES IN ARTICLE 12, PARA. 2 OF THE MAIN TEXT. US SUGGESTED MAKING ONE ANNEX OUT OF THE FOUR SUB-ANNEXES FOR THE SAKE OF SIMPLICITY, CONFIDENTIAL

CONFIDENTIAL

PAGE 03 USUN N 03710 142257Z

AND WELCOMED THE POLISH AMENDMENTS AND OTHERS ALONG SIMILAR LINES. THE US TOOK THE TUNISIAN AMENDMENT AS INDICATING THAT AMNY DELEGATIONS WOULD ACCEPT SPECIAL PROCEDURES AS AN ALTERNATIVE SO LONG AS THEY WERE NOT COMPELLED TO USE THEM, AND NOTED THE SIMILARITY OF THIS APPROACH TO APPROACH OF OTHER DELEGATIONS WITH REGARD TO THE LOS TRIBUNAL. IN ARTICLE 9, PARA. 7, US SUGGESTED ADDITION OF THE WORDS QTE OR ARBITRATION

UNQTE TO ACHIEVE PURPOSE OF TUNISIAN AMENDMENT WITHOUT
PLACING SPECIAL PROCEDURES IN AN INFERIOR POSITION.
(THIS WOULD GIVE PLAINTIFF CHOICE OF DEFENDANT'S
FORUM OR ARBITRATION WHERE CHOICES UNDER ARTICLE 9,
PARA. 1 DIFFER, AND NO ONE WOULD BE FORCED TO GO TO
SPECIAL PROCEDURES OR LOS TRIBUNAL.) US ALSO QUESTIONED
WHETHER ARTICLE 7 OF POLISH MAENDMENTS COULD LEAD TO
INTERPRETATION THAT A SPECIAL COMMISSION COULD ONLY
FIND FACTS, AND SUGGESTED NEED FORDRAFTING CHANGES
OR DELETION OF ARTICLE 7.

5. POLAND CONCLUDED DEBATE BY ACCEPTING CHARACTERIZATION
OF SEVERAL DELS THAT SAID ANNEX II WAS SIMPLY A FORM
OF ARBITRATION, FRG SUGGESTION ON APPOINTMENT OF MEMBERS,
AND NEED FOR CLARIFICATION OF ARTICLE 7 SUGGESTED BY
US. POLAND ALSO INDICATED TUNISIA'S AMENDMENT WAS
UNACCEPTABLE BECAUSE IT PLACED SPECIAL PROCEDURES IN
AN INFERIOR POSITION.

6. USSR REP TOLD US REP PRIVATELY HE COULD ACCEPT US
PROPOSAL ON ARTICLE 9, PARA. 7.
SCRANTON

CONFIDENTIAL

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: LAW OF THE SEA, DISPUTE SETTLEMENT, MEETINGS, NEGOTIATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 14 SEP 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: coburnhl
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976USUNN03710
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D760347-0013
From: USUN NEW YORK
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760960/aaaabzqx.tel
Line Count: 137
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION DLOS
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 76 USUN NEW YORK 3685
Review Action: RELEASED, APPROVED
Review Authority: coburnhl
Review Comment: n/a
Review Content Flags:
Review Date: 19 MAY 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <19 MAY 2004 by woolflhd>; APPROVED <15 SEP 2004 by coburnhl>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: INFORMAL PLENARY ON DISPUTE SETTLEMENT SEPTEMBER 14, 1976
TAGS: PLOS, LOS
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006